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SLAVERY IN GERMANIC SOCIETY DURING THE MIDDLE AGES.

II. *Restitution. The upward course. Amelioration of slavery.*¹

THE rotary movement of civilization, wherein by degrees the lower layers of society slowly work their way to the surface, and *vice versa*, brings change also into the state of the slave. At first this change is hardly to be counted as an improvement in the actual condition of slaves; but inasmuch as it gave them a different legal status, it did in time lead to a real amelioration. The effects of this slow but important movement are, of course, shown in the last stage of the steep ascent where the slave is finally delivered from his bondage. But this final result (except in extraordinary cases) is as yet far off.

On the continent political revolutions were the cause of much change. The unsettled condition of all things during and directly after the conquest opened ways for the slave to improve his situation. An upheaval of that kind is likely to be felt even down in the lowest layer of society; for during such a time old stipulations can be disregarded and new ones made without much fear of punishment by the legal authorities. At the arrival of the Barbarians those who had least to expect from their present lords were the ones who had least to fear from the newcomers, their state being sufficiently miserable as it was. They too were the ones who most easily submitted to the new rule. In the clash of political and national differences, the slaves had a momentary chance to revolve into another sphere. Thousands of fugitives probably joined the conquerors and won freedom and position in battle. That they did not all do so must have been due to German² rather than

¹ Authorities consulted (corrections and additions to previous list):

Lex Salica, ed. BEHREND.

Sagabibliothek (Altnordische) heft 3, 4, 6.

The Saga Library, translated by William Morris, vols. i-iii.

The Story of Burnt Njál, translated by Dasent.

THIERRY: *Récits de l'Histoire de France. I.*

HEFELE: *Conciliengeschichte*.

LONING: *Geschichte des deutschen Kirchenrechts*, vol. ii.

² Those that were of German origin and had recently been captured might count upon a welcome; whereas others, whose loyalty was of a more doubtful character would receive less of a welcome.

to Roman antipathy. On the other hand, while they who had been below rose, they who had hitherto had the command sank. During the centuries which followed the Germanic conquests, Roman provincials of noble birth were reduced to servants and slaves,¹ while their former inferiors were entrusted with position and power.

This movement, which was permanent on the continent, had no parallel in the Middle Ages in the Germanic North. Of the condition of the slave in England before and after the conquest by the Angles and Saxons, we know next to nothing. In the Scandinavian peninsula and Denmark the migration and conquest, if such there was, must have taken place so many centuries before that everything had become settled and the past obliterated. That the slaves when mentioned are often characterized as dark-haired, small, and homely² is perhaps no mere expression of contempt, but a national trait, since they must have been of either Finnish³ or Celtic origin. They are sometimes spoken of as enjoying confidence because of cleverness, readiness, swiftness of movement;⁴ and this might fit either race.

The general condition of the slave in the North has already been indicated, at least as far as the laws define. To suppose that the letter of the law was in every case an image of life would perhaps be profoundly unjust to humanity.⁵ Bad as it must have been there were probably many and prominent exceptions in actual life to the harshness of the laws. Otherwise the two races—that of the master and that of the slave—must have lived in a contest for life or death which would end in the extermination of at least one of them. Tacitus (*Germania* c. 25) in his famous passage, speaking of the lenience of

¹ GREGORY OF TOURS, iii. 15.

² Svart (Swart) as a slave's name is mentioned at least twice; Busti (Bristle) is the name of another; Finn the little, "the smallest and swiftest of foot," etc.

³ Finnish from the original or neighboring population, Celtic from the coast of Ireland or France where the Vikings raided.

⁴ *Egils Saga*, c. 83: "Maðr sá var með þorsteini er Iri het hverjum manni fót-hvatari (swift of foot) ok allra manna skygnastr (sharpsighted).

⁵ It (the law) presents in many instances a blending of old and new; the past preserved from piety and showing the utmost rigor of custom, the present suggesting later more expansive views. Sometimes and more generally the new predominates, sometimes the old; while at times the two are so closely interwoven that though we know the law is not and seldom can be a homogeneous structure, always containing traces of the past, nevertheless there is little or nothing left by which to distinguish what is old and what is new.

the ancient Germans in dealing with their slaves, says that they treated them neither to chain nor to forced labor and killed them rather in a fit of anger¹ than from inclination toward cruelty. Tacitus has here with profound insight given the character of the Barbarian as compared with that of the Roman. Cruelty and indifference to suffering are even today a characteristic of southern nations. It is certain that on the continent the Germans were considered liberators rather than oppressors by the tormented lower and lowest classes.² The disposition of the German (Scandinavian and all) toward his slave was—at least under ordinary circumstances—one of fair appreciation, if he proved himself a valuable servant. The slave was treated well; if he impressed his master favorably, he was even recognized as being bright, capable, useful.³ And yet the contempt for the life of a defenseless thing frequently got the better of the good humored warrior, and this defenselessness remained, no doubt, in law and in life alike the desired result of the judicial position of the slave and was his main and greatest misfortune. It may be that private arbitrariness and violence when they occurred were but repetitions of worse earlier conditions, passed away except among certain high-handed aristocrats. It is possible, too, that in other circles of more exalted power and perhaps more exalted views, this willfulness yielded at times to generous motives and offered the slave an unrivaled opportunity for a better station in life. Certain it is that, apart from Christianity, nothing contributed so powerfully to a more humane view of the position of the slave in ancient Germanic society as the establishment of kingship. The main, and often the only, chance for the slave lay in his connection⁴ with the supreme officer of the community, the one who

¹ Cfr. *Egils Saga*, c. 40. "Þorgerdr Brák was the name of a female slave of Skallagrim . . . " whom Skallagrim kills. Egil again kills the dearest of S.'s workmen as a vengeance for her death. Both deeds are done in a fit of uncontrollable wrath, or rather rage.

² Perhaps mainly because they were newcomers who did not regard slavery as an economic institution which must be kept going at any cost.

³ *Laxdæla Saga*, c. 11. "Þorðr owned a thrall who was called Ásgautr. He was prominent in regard to qualities and able with his hands (?), and although he was called thrall, few might be his equals though they were called free."

⁴ *Ynglinga Saga (Heimskringla)*, c. 30. "Egil . . . was king in Sweden after his father, . . . he had a thrall hight Tunni who had been with Aun the Old and was his treasurer. But now when Egil became king, he set Tunni amid the other thralls; and this he took exceedingly ill, and ran away, and many other thralls with him." (Morris's trans.)

alone could claim exalted power as his birthright. This was a chance of peculiarly undefined and personal character, but was present and active with similar results everywhere. The king, possessor of the highest, most untrammelled power, was the natural protector of every abused individual within his realm: this he was *bound* to be in order to give his position the superiority and moral force which it needed among willful and selfseeking family chieftans. To his *mund*, at least in its final development, anybody, free or thrall, might appeal (though at first, of course, it applied only to people of free birth). Even if the king's power could not and would not break the bondage of the slave born, or interfere with the jurisdiction of the master, the king could (under circumstances) recommend a milder treatment and give an example to that effect himself. There are few instances of the king having put slaves to death except for treachery against their own masters,¹ which was looked upon as unpardonable.

As an owner of great property and holder of supreme rights over men's fortunes and lives, the king himself had many slaves come to him as gifts or booty or because of offense, stocking his farms as a necessary inventory. All such slaves, because of their owner's power and wealth, enjoyed better circumstances and were of higher value than those of others. This condition may not have existed completely until the king's rights became definitely developed, largely through the example set by the church; but the elements of it were inherent even in the idea of kingship. The Frankish *puer regis* or *ministerialis*, the king's slave as compared with the slaves of others, was a rather privileged person, protected by law, equaling the freeman² in regard to smaller injuries, in regard to the greater being on a level with the freedman or the *litus*.³ The other slaves, *servi casati*, *mancipia*, *fiscalini* of the royal domain—which at least as far as the Frankish empire was concerned represented the greatest complex of tilled and untilled land and the largest mass of unfree labor of the period—these, even if on a lower social plane, enjoyed the same improved conditions. They were naturally less driven for the sake of profit than were those in the ordinary landowner's possession. The royal domain was too vast to be managed with close economy. Charles the Great, indeed, made an elaborate attempt to establish a system in the output of produce so that nothing might go to waste, but the kings before or after him took

¹ *Saga Olafs Trygvass. (Heimskringla)*, c. 55.

² *Lex Rib.*, 10, 2.

³ *Lex Sal.*, Capit. i. 1.

no pains thus to supervise in detail, and free and unfree alike grew well-off on the king's plenty.

Further, the king, too, could free those who, because of offense had become enslaved and needed a patron to redeem them; although it is doubtful whether he ever found it wise to tamper with the working of the law, even if it were an act of mercy. Finally, by the very reason of his position, the king could grant to his slaves offices which even free men might feel honored in accepting, although they did not always feel honored in obeying.¹ Being a lord superior, a more independent, better equipped, and more highly regarded official than the chieftain, the king could invest his humble slave with some of his own luster, and could confer upon that servant dignities not only of the royal household, but of the administration of the realm which would make the despised slave not only the equal, but the superior of the free followers. The Merovingian *sacebaro*, the royal financial agent² and even the graf, were no doubt often unfree, invested with considerable power. In these cases, however, it seems likely that Roman imperial administration was influential as a model.

Yet, while this liberality on the part of the king had the aspect of generosity as compared with the actions of most other lords, we may readily suppose that the motive was not generosity but self-interest, inasmuch as a prospect of elevation and reward of this kind would spur the servant to far greater effort. Those positions which later became sources of the most extensive power to the magnates of the realm, *e. g.*, majordomus, mareskalkus, marshal, etc., were at first identified only with the king's slaves, but by acts of grace and royal backing they became by degrees places of importance.³ These servants being at first absolutely at the king's bidding, he secured implicit obedience by choosing and supporting them and more real power than if he had altogether employed freeborn men. There is no doubt that the use of slaves or quondam slaves as comites, officers of the court and royal

¹ *Vide* the incident in *Saga Olafs hins Helga*, c. 122, where Erling says: "But this shall I deem a troublous matter, to lout before Seal-Thorir, who is thrall-born through all his kin; although he be now thy steward, or to bow to others such as are his peers or kindred, although thou lay honor on them." Likewise c. 237, where the king says: ". . . whereas I have raised thee up to might from a little man." Cp. c. 148 (Morris's translation).

² *Lex Sal.*, tit. 54.

³ GREGORY OF TOURS, iv. 46. (Andarchius), iv. 51. (Charegisil), v. 48. (Leudast).

commissioners was one of the causes—if only a minor one—of the rapid growth of Merovingian power into one of almost despotic nature.

Moreover, whatever indirect political results this elevation of the slave may have brought about, it caused also something of a social revolution of ideas. Because of the king's authority, it was necessary to hold the slave who represented him in higher esteem than would otherwise have been possible. Even legally the king's schalk was the equal of the free.¹ That female slaves by the same arbitrariness of power might be elevated to a position of queen was quite in keeping with the same idea. It is supposed, however, that in most cases this slave was originally of free birth reduced to slave by misfortune or for other reasons, the king's "ambátt" as so often occurs in the tales of the Sagas.² The child of such a union might—if he were recognized by his father—become the heir of the kingdom, so that through the backdoor of illegitimate connection the slave might come into even greater honor and dignity.³ That this movement, as far as the general slave was concerned, was nothing but a brilliant exception; that the slave, when still a slave remained in every case at the mercy of his master who could in an instant throw the creature of his power down as far as he had raised him—shows that this means of ameliorating the state of the slave was as fluctuating and uncertain as was the reduction to slavery of the freeborn. It is reasonable but not always warranted by the sources to suppose that the act of liberation sometimes preceded elevation into a higher sphere. When this did not occur beforehand, however, it is possible that the slave's unfortunate position aroused more interest because of his conspicuousness in his high office. But on the other hand, his behavior and arrogance as representative of royal prerogative must just as often have made him more utterly despised and the royal power appear more misguided in its choice

¹ WAITZ, i. p. 228.

² *Saga Olafs hins Helga*, c. 131. "There was a woman hight Alfhild, who was called king's-bondmaid, though she was come of good stock." *Saga Haralds hins Hárfs*, c. 40. "... Good kin she had. . . . She was called king's-bondwoman; for in those days there were many of good blood both men and women that owed homage to the king" (Morris's translation). GREGORY OF TOURS, iv. 26; v. 17. (Queen Austrichilde); note I. Cp. v. 20, 49.

³ GREGORY OF TOURS, iv. 25, v. 20. "... ignorans, quod, praetermissis nunc generibus feminarum, regis vocitantur liberi, qui de regibus fuerant procreati (ed. OMONT).

than ever. And inasmuch as the royal power in general grew and the power of the people sank there was some cause for disquietude.

Another stronghold of hope for the slave was the power of the Roman Catholic Church. What the king represented within the political sphere, the bishop represented within the moral. There is no doubt that, but for the constant good offices of the church through her ministers, the improvement in the condition of the slave would have been of far slower growth.¹ The bishop, of course, could, as little as the king, interfere with actual ownership or abolish slavery; but he tried to exercise a religious as well as a practical pressure upon the slaveholder. On the one side, mild treatment of the slave was always spoken of as one of the important evidences of a Christian spirit; on the other side, the churches and monasteries were recognized places of refuge for the fugitive or abused slave, the priest or abbot before giving the slave over exacting an oath of promise from the slaveowner not to do the refugee further harm.² In course of time this right of asylum was extended to the houses of bishops and other clerics, in England to the king's court and the courts of temporal lords—nay, among the Lombards the house of an ordinary freeman could give protection to the fugitive slave.³ It was likewise due to the influence of the church that the king's *mund* acquired the all-encompassing protective power which it very soon came to have, inasmuch as to the church the king's position alone seemed stable enough to offer successful resistance to the violence and contempt for human life which certainly characterized Germanic society.⁴ Besides, the church liberally rewarded any such service done her representatives, and in this way established a higher standard of treatment.⁵ The church also favored liberation of the slaves to a degree which far exceeded that of

¹The church pronounced excommunication and two years' penance on the lord who killed his slave without the knowledge of the "judge." *Concil. Agath.* a. 506. c. 62. HEFELE, *Concil. Gesch.* ii. sec. 222. *Concil. Epaon.* a. 517. c. 34: "Si quis servum proprium sine conscientia iudicis occiderit, excommunicationem biennii effusionem sanguinis expiavit." HEFELE, *Con. Gesch.* ii. p. 685. *Concil. Wormat.* a. 868. c. 38. HEFELE, *Con. Gesch.* iv. p. 371.

²GREGORY OF TOURS, v. 3. *Lex. Sal.* Capit. iv. 15. Cp. *Concil. Aurel.* a. 511. c. 3. *Concil. Epaon.* a. 517. c. 39. The churchman can help the slave by paying the price to the lord or helping him to further flight at the same cost. *Lex Alam.* 3. 2. *Leg. Lang.*, ROTH., c. 372.

³WILDA, p. 543.

⁴WILDA, p. 539.

⁵GREGORY OF TOURS, iii. 15.

any private or public slaveowner.¹ On the other hand, it is true that the church did not abolish slavery within her own precincts; she seemed far more eager to have slaves given her than to give them away herself, and she must thus be declared guilty of half measures.² Yet in this respect, as in many others, the church had to conform to the economic condition of the time, and in her struggle for material independence, which alone could secure success to her in her ideal pursuits (since might alone can protect right), she needed cheap labor, and took this from whatever source it was offered. In holding slaves as cultivators of her enormous estates, the church made servitude as comfortable an existence as it could ever become. The slave of the church was more esteemed by the law than anyone's except the king's, and the churchmen were the first, who, in judging a case made a distinction between intentional and unintentional acts, thus by degrees opening the way to a more intelligent jurisdiction even for the slave.³

The most difficult point still remains to be dealt with, namely, when and how amelioration took place in the plain everyday-relation between the ordinary slave and his master. Where there were no extraordinary forces at work, the change naturally was almost imperceptible, accomplishing only gradual and apparently very insignificant results. But this is the usual way of life and safe to judge by; while being more difficult to follow, it is more important to try to explain. In regard to the relation between master and slave it has already been pointed out that the letter of the law and the actual condition might not correspond. Grimm, in his *Rechtsalterthümer* (fourth edition), eulogizes the patriarchal life into which the slave as mute and always obedient servant fitted so well. In his picture the slave figures as the natural completion of a perfectly harmonious household. It is very likely indeed that once upon a time such harmonious conditions existed.⁴ Occasionally, however, these conditions continued to exist, wherein the

¹ Numerous instances in the *Formulæ* and other sources. *Life of St. Eligius*, c. 10.

² LÖNING, *Gesch. d. deutschen Kirchenrechts*, ii. pp. 227-229. *Leg. Baju.* (ed. Walt.), tit. i. c. 5. "Si quis servum Ecclesiae sine mortale culpa occiderit . . . duos similis restituat . . ."

³ WILDA, p. 547.

⁴ But rather in the East proper, where life is easier and human beings can be maintained at little cost, than in the West, where all things come harder, because the struggle for maintenance of life is more severe; a circumstance which must count a good deal towards influencing the temper of the ruling class.

slave, instead of being abused, was cared for and protected as a legitimate member of the family; and it is probable that under these circumstances he wished for nothing better. But in cases where this harmony was broken or did not exist, the whole weight of the situation descended upon the slave and made him a victim of exploitation and tyranny. Such a condition cannot last but must sooner or later see a change. It must have been the captive, the freeman reduced to slavery, without any differential relation to the lord, who was the first one to feel the degradation and strive with all his might to get out of it, thus setting an example to those born in the condition. The slave in this form revealed himself as a man reduced to a thing, yet without any willingness to acquiesce in the situation, his will as a matter of course always at variance with his master's. Thus it might be said that contemporaneously with the establishment of slavery begins the desire for the destruction of it; the individual suffering makes possible to others the realization of suffering in general. Of course, the master succeeded in breaking the will of the slave, and if no fortunate circumstances intervened, the former freeman was reduced to such non-identity as the law prescribed. But therewith the incident was not closed, the same thing happened over again, the same revolt, the same breaking into bondage; and however useless and painful to the individual, with the slave in general it served to keep the wound open, and keep alive the consciousness of his situation. History has very few notices of any concerted movement on the part of the slaves to secure their release. They ran away, they infested the woods and the roads as highwaymen,¹ for in some way they had to secure a living; spontaneous outbursts, these, of the longing for freedom which only succeeded in making antagonism on the part of the free keener than ever. Bands of slaves or even small armies of them sometimes declared war upon society and even gave battle to the military force. Sometimes they succeeded, thus throwing parts of the country into utter confusion and necessitating martial law. But sooner or later the fierce glow of rebellion wasted itself, the marauders were pursued and beaten, a terrible example set those still uncertain, and slavery existed as before. Thus there can be no doubt about the slave's will to be free, even if he was accustomed to thralldom, a wish most unwelcome to his owner and peremptorily punished as an intention leading to destruction of property no less

¹ *Ynglinga Saga*, c. 30. The story of Tunni. "Thereafter there flocked much folk of the runagates and they lay abroad in the wild-wood," etc.

than to neglect of inviolable duty. This was perfectly natural. If, as Mommsen suggests, the slave was originally so absolutely without rights that he had the master to thank even for his life,¹ his relation was not only one of absolute subservience but of sacred obligation. There was a religious significance in his being under the lord's command which made disobedience and revolt doubly odious. He broke bonds which sprang from gratitude, gratitude for the greatest gift of all, the gift of life, not from the sense of impotence only. As a natural result, however often the slave broke away, if he did not perish in the attempt or as a result of it, he was always brought back to his former, perhaps to a worse, state. He was indeed made to understand that the lord had rights none could do away with. Thus under the influence of fear of consequences, the slave's will may well have melted down to a mere wish which almost evaporated altogether, when he contemplated the futility of any attempt of his. The resulting apathy or desperation may have effected a subtle change in the disposition of even the meekest slave, a change before which even the almighty lord might quail.

The old fiction, then, that the slave had no will outside his master's, that apart from him he was nobody, exploded as a fiction should, and although it was kept up legally at least,² people ceased to believe in it, as they ceased to believe in the ordeal. Even among the Romans society knew that the slave, whatever his juridical position, was in reality a person with both will and power of decision capable of doing injury far beyond his limited sphere of action. In trusting their children to slave educators, for instance, the Romans must have been aware of the danger of having characters formed not at all in keeping with their own conception of proper living. The strength of the master lay in his power to crush this will of the slave; deny it or ignore it he could not. When the slave broke the bond of obedience, the cowardice for which he was despised, but to which he was purposely brought up, made him afraid of doing anything openly. Thus stealth, murder, night attacks, were his chief acts of self-assertion. In such cases, when the slave acted on his own initiative without the knowledge or permission of the lord, showing himself unmindful of command and punishment, the question of responsibility for his doings soon became acute. Previously—if it be permitted to reconstruct

¹ What death a prisoner taken in battle might suffer. See *Njálssaga*, c. 156; (The death of Brodir in Ireland). *Saga Har. Hárf.* c. 31.

² See the curious nature of many titles in the laws.

the past wholly from suggestions found in the laws (they being to such large extent piecework anyway), seldom if ever from any direct statement to that effect—the lord was responsible for everything. The slave committed a misdeed very much as an animal would, a stupid blunder, as it were; and the lord was held to account, as if he had himself committed it. For who could argue concerning right or wrong with the mischievous or foolish brute, devoid of real intellect as of sense of duty? The oldest of the Germanic laws, *Lex Salica*, again and again mentions the lord as having to pay the damage or the value, as well as for the temporary uselessness¹ of the injured or destroyed object. This shows the enormous importance of property even in a primitive society. The lord then took upon himself to discipline the ill-behaved slave. But if the question of outlay could better be met in a different way, money and kine perhaps being dearer than slaves, the owner yielded the slave up to the injured party as thing for thing, as slave for slave; a common way of paying material damage. The new owner then, if he liked, punished the slave. For if a dog or other beast could be made to understand it had done wrong and vexed its master, the slave could, too; though he was often done away with altogether, if the lord could better afford this than having a constant nuisance around. But when the slave committed a deed for which it would in every way be disadvantageous to the lord to plead responsible, there was an odd change in the behavior of the free. Although the lord was still, in the eyes of the law, the very source of existence and the mainspring of his acts, yet the slave rose in general opinion to a higher level. Or, to state it more from the standpoint of practice than of philosophy, the slave sank from the sometimes offensive, but generally useful brute, to the evil intentioned, dangerous reptile whose movements were always to be watched and whose fangs to be feared. Under such circumstances it was natural that the lord could not afford to be looked upon as the constant source and origin of every deed of the slave. The law, as before, demanded that the lord pay for the slave,² he having nothing of his own; and the extent of this responsibility showed itself in the lord's having to pay the full wergeld as well as all other expenses caused by any action of the

¹ Much in the same way as interest is paid on money borrowed, for the time useless to the owner unless such compensation is made—if that is the right explanation of *dilatatura*.

² *Lex Fris.* (ed. Walt.), i. 13, 14. *Lex Sal.*, xi. 2, 5.

slave's. But henceforth there was a distinction made between the economic and the moral liability. The two views, the older and the newer, appear side by side in many laws, as if no definite distinction were made and both had currency; as very likely they had, since past and present are strangely blended in these laws, no revision of the previous being thorough nor any new departure absolute. The lord might indeed be at the bottom of the evil act, to ascertain which was perhaps a tortuous procedure in the courts; but it became a question of social self-preservation with him to deny any share in the deed, since he might not wish to face the indignation and the revenge, and might find it convenient to refuse rather than to bear the guilt imputed to him. Thus the fallacy of generations in regard to the moral non-identity of the slave collapsed and a more reasonable basis for his existence was established. Henceforth the slave was looked upon as capable of doing whatever he had a mind to and from a personal motive,¹ the nature of which it was the freeman's first business to ascertain.

There was something peculiarly galling to the pride of the free in an offense committed by a being so degraded, so dependent; but when it concerned life more precious than his own, the threatening and murder of freemen or the slaying of his own master, it became unendurable. Such a matter was felt to be of lasting importance. As the *Njálssaga* casually remarks: "Thralls are men of more mettle than of yore; they used to fly at each other and fight and no one thought much of that; but now they will do naught but kill," ch. 37 (Dasent's trans.). The immediate impulse on the part of the free was at such times to cut down² the despicable being, and very few escaped the swift doom. But if the slave did get away, punishment by the lord appeared no fit return; the sense of outrage and thirst for revenge was too strong to be satisfied with the customary compensation and called for a more definite placing of guilt and adequate atonement. Of course the slave had nothing more to lose than his life; but this was

¹ It seems as if this lesson must have been learned everywhere and rather early; but nowhere with such force or effect as by the Germanic nations who came in contact with the cultivated Roman slave.

² In the Icelandic sagas the murders planned by freemen with slaves as the would-be assassins invariably end with the slaughter of the latter before they have had time to do much harm. In such case they fall victims to their master's wiles, who promises them freedom and good gifts for their obedience. *Eyrbyggja S.*, cc. 26, 43. *Egils S.*, c. 81.

to be taken from him by those¹ who had a better reason for doing so and a greater grievance against him than his owner, who avowedly had no connection with the crime.² Before he was put to death, however, the slave had to make a full confession of his guilt, and since nothing but stringent measures could compel him to tell the truth, he was promptly put to torture. This was the first fearful tribute that the slave paid on the road to the establishment of his own identity; a tribute every downtrodden layer has had to pay before it reached the more even balance of power.

In the case of killing his master, the question arose: had he been hired to do so by another, or had he done it out of his own spite? To settle this the slave had again to be questioned by the most efficient means. Were there no reason for supposing the deed instigated by another, no death could be too swift nor any questioning too painful to settle the reasons for this most heinous of all crimes. In any case it was the heirs of the deceased who conducted the trial. So far the whole proceeding was private, public justice being resorted to only when the lord had refused to do his duty; namely, to aid in producing the slave for inquisition or punishment.

The question may briefly interest us here whether whipping as a means of producing evidence was a native institution or, as some writers have it, adopted from contact with the Romans. As far as we know the Germanic nations never employed torture for the sake of torture, at

¹ *Wihtrad*, c. 23. *Hlotare & Eadric*, c. 1; 3. *Ine*, c. 74 and 1. See also *Leg. Lang*; *Luitpr.*, c. 21; and *Roth.*, c. 142: "Et si mortuus fuerit," etc.

² On the basis of the slave being nobody, doing nothing, the lord at first paid the wergeld in full and kept the slave; but the semi-recognition of the culpability of the slave is already expressed in the famous passage of *Lex. Sal.* tit. 35, 5, where the slave is traded to the injured party in payment of half the wergeld. This is perhaps the directest evidence we possess of the beginning of a change. But even so the lord could protest and throw the whole blame on the slave (*Var.*). In *Leg. Lang. Roth.* c. 142, the lord pays half or all of the wergeld according as the man died or survived, and besides yields the slave, the latter to be counted for half, or only a portion—it is not clear which. *Gpl.* c. 163 goes even a step farther in demanding that the master either give up the thrall or pay the wergeld. *Lex. Rib.*, cc. 17, 18, 22, 29, holds the same attitude, except that here it is not the value of the freeman but a certain fractional sum which suffices, the so-called "sclavenwergeld" which introduces on behalf of the slave something like what had been long ago settled in regard to the litus; a legally accepted money-status independent of personal valuation. *AMIRA*, i. p. 393. "Wegen todtschlag eines freien. . . . Sonst gilt die regel das lösegeld dürfe dem gesetzlich. werth d. unfreien nicht übersteigen."

least upon the slave. The natural impulse of the enraged freeman was far more to kill the loathsome mischief at once, destroy him as one destroys vermin. But the rules of blood-feud and the need of finding a true cause against someone, so that life should not be spilled for nothing, demanded that the thrall, when he had done something, be forced to speak. The Icelandic sagas repeatedly mention freemen who, having caught the miscreant slave, had "a true tale out of him."¹ What this consisted of is nowhere exactly said; but the laws speak of the right to torture (pina) the slave for the purpose of getting the "true tale" out of him.² The race which knew so many and terrible ways of punishing their equals and slaking their thirst for revenge in a lingering death for the victim must have known how to make an obstinate slave come around. It is unnecessary to imagine what they might try. Very likely the slave himself saved them a great deal of trouble, since cowardice was looked upon as his chief characteristic; but at any rate the use of the whip was nothing new. The Germans may or may not have profited from the Romans in learning how to make flogging tell on a slave; their knowing how to flay a man alive by pulling off the skin with the hair (decalvatio)³ or thrash him till the skin peeled off does not seem to necessitate their learning. Torture comes easy to hardened, pugnacious natures who themselves scorn pain or the weakness of showing suffering.

Torture, however, could not be resorted to indiscriminately. There were instances where the slave was only vaguely suspected, as it were, on no evidence but suspicion itself. The lord disbelieved the charge, he went so far as to deny it, and yet he allowed the painful quest to take place, largely because he had no desire to run the risk of exposing himself or shielding one unworthy. The torture might end in the slave becoming disabled or even in his death, which meant pecuniary loss to the lord. This must have happened a number of times before life thus wasted caused any decision among the masters to save property, inasmuch as it would not be the poorest of slaves who came under suspicion, but the ablest. The lords finally made the rule and the law embodied it that when such a case came up, the injured party in return

¹ *Eyrbyggja S.*, cc. 26, 43.

² *GþL*, c. 262, "Pina hann hvarke við ellda ne við jarn ne við vatn."

³ *Cnut's Laws*, ii. c. 30; 5 (ed. Schmid). *GþL*, c. 259. ". . . berja hud af honom görvalla (altogether); . . . hydjan hann fyrir fimt." 22.

for the privilege of making the quest should deposit at least the equivalent to the slave before torture as a security to the owner. This not as any boon to the slave, but as a consideration to the lord. For although the slave's act was the immediate object of the investigation, it was the interest of the lord which was ultimately at stake. As Jastrow expresses it:¹ "If the plaintiff has only first given pledge to the lord for the value, there is no restriction to his power, he may torture the slave as much as he thinks fit!" Torture, however, proved so effective in bringing about discovery of the guilty and just punishment for the evildoer that it was employed for matters less grave, for theft, *e. g.*; although it is difficult to say which was held more precious, life or property! *Lex Salica*, the oldest and most authentic of our laws is the one in which the stages in the development of liability on the part of the slave may be studied most successively; not that *Lex Salica* is the more "progressive" among the laws, but because the leap from the rigid past to the more lenient present seems less tremendous than in many other laws. In *Lex Salica* the intermediate stage seems as yet to prevail, there is a certain wavering perceptible in the sections with their variants which is favorable to preserving most of the peculiar traits of the past and yet suggestive of the future. In title 40 the trial of the slave on these grounds is treated with a fullness and comprehensiveness found nowhere else in the old laws. But even here stages are perceptible, making the title rather heterogeneous and showing the need of supplementary sections from other titles,² just as the law itself is heterogeneous and needs explanation and commentary from other sources. While § 1 states the naked rule that the slave accused of considerable theft was put to torture in order to make a clean breast of it, § 2 starts a new principle and only §§ 4 and 5 take up the thread begun in § 1. The matter was evidently altogether a private affair, an expression of the private jurisdiction of the lord to whom the injured party appealed for retribution and to whose jurisdiction

¹Quoted from memory.

²See the great difference in tenor between the stern tit. 12, where the slave suffers 120 blows for theft of two sol., or castration for theft of six, and tit. 4; 1 and 3, where 120 blows are given for theft of 15 and 35 sol. respectively. It makes little difference that in 12 it is punishment, while in 40 it is torture; in fact, one would expect in the last case the blows to be augmented. But if tit. 40 is modeled on *Leg. Visig.*, vi. 1 and 4, tit. 40 must be of later origin than tit. 12, while in itself, except in regard to detail, it seems no particular improvement on its "lordly" prototype.

he succeeded¹ as soon as the master agreed to let him, instead of trying the slave himself. The slave was then put to the post or stretched on the bench and the quest proceeded, the plaintiff being provost, the lord for greater security supervising. Very likely the lord also had previously employed a similar method of obtaining truth; under him, however, the torture was partly a castigation, much as animals are beaten out of anger and desire for revenge. But in this later case, the vengeance was of a more poignant nature, the first fumbling attempt at justice, blindly administered. If the quest succeeded the slave was either killed² or reduced as utterly as cunning could make him. He was henceforth merely the beast of burden, the obedient tool, nothing more. In § 6 the willingness of the lord to let his slave undergo torture (provided he was himself secured) becomes obligatory, and the law looks upon the unwilling lord as the true perpetrator of the crime, the secret thief or murderer.³ In §§ 7-10 the matter has progressed even further, the proceedings have been or may easily be transferred to the public court, mainly because the lord has been negligent or unwilling to give up the slave, the lord thereby having loaded himself with the guilt which would under other circumstances have been the slave's, and being obliged to make amends accordingly. The slave then had to be presented in court before the assembly of freemen; thus passing from obscurity into the full daylight of public procedure; hardly to his own satisfaction, since the publicity of his punishment, his naked misery, must have made his smart even keener.

Paying heavy fines and damages and yielding the slave in addition must have met with objection on the part of the lord, and even under circumstances must have told on his economic condition. The uncertainty of the whole proceeding, for the plaintiff, of securing evidence

¹ It is significant that the plaintiff himself did the torturing, *i. e.*, himself delivered the blows. Evidently *he* alone could be trusted to make the blows tell, the lord having been more inclined to perfunctory treatment, to let the slave slip through without too great a hurt, so as not make him unfit for work for weeks afterwards.

² It is impossible to see who, the state or private individual, should have been particularly concerned about what punishment was given the criminal slave (notwithstanding *Lex Sal.*, 40, 4, to the contrary) unless it were the church.

³ But that it was the slave and not the lord against whom justice was henceforth directed is evident from the demand that the injured party, when the slave had confessed, should pay the price of the slave to the lord, who was thereby in a measure reimbursed for the loss in laboring power. For that money, the law implies, he could buy another, everybody thus having received his proper due.

of the guilt; for the lord, of being properly reimbursed for his loss provided the slave was innocent—was such that a less stringent method, except in flagrant cases, came to be preferred. The lord, therefore, according to tit. 40.2 (*Var.*) and 12.1 (*Var.*) was permitted to release the hide of his slave from torture and punishment by paying a nominal fine adjusted to a nominal value of the slave¹ and himself execute the punishment—all presumably to be done only in case the plaintiff had no objection. A new phase was reached, however, when the master refused to reclaim his slave from justice and made him bear the results of his misdemeanor altogether himself. In other words, paying for keeping the “thing” could not counteract the complications caused by the “person,” and the master was inclined to let the latter bear the effects of his own acts.² This must to some extent

¹ 3 sol. against 12 sol.—what the German authors call “Sclavenbusse,” the meaning of which, by the way, is not quite clear (unless it be that the fine for the slave is henceforth adjusted to the socially small value of the slave in the same way in which payments for the free are adjusted to his high value). The fine is certainly small as compared with the payment for releasing the hide demanded from the lord in other laws. *Lex Rib.* cc. 18, 19 (36 sol.) *Leg. Lang. Roth.* c. 254 (40 sol.). *Wihtrad's Laws*, c. 27 (70 shill.). But *Lex Sal.* is so much older that the comparison hardly counts. Notwithstanding the difference in age, the title generally comes nearest in tenor and meaning to FþL, x. c. 40, where are demanded 6 aurar (4.2 sol.) for the hide of the thrall. The three sol. nevertheless are something of a puzzle. Do they signify (1) that the slaves were too plentiful to have much of a price paid for them; or (2) was the price of the slave perchance so low because he had lost in value, as animals do which are known to be troublesome and vicious; or (3) did the plaintiff agree to the small amount because his suspicion was not well founded and he was glad to get something for his pains (on the order of tit. 53, where the offence being “worth” 15 sol. the plaintiff is “bribed off” with (3)? Plainly the price as well as the punishment are indicative of warlike times and of the extreme social inferiority of the slave.

² But this feature is not met with in *Lex Sal.*, only in later legislation, the capitularies and other laws. GþL, c. 259 decrees that where the lord will not free the slave with oath, the slave's head shall be struck off. It is remarkable to find in Norse law, where the old and the new at first sight meet abruptly, so clear an indication of the intermediate stage as in the following FþL, x. c. 40 (almost a *Lex Sal.* 40 over again): “Everyone shall be responsible for his slave born in this country, both with word and with oath in what happens to him either in word or in deed. But if he (the slave) runs away from his lord, then the lord, if he can reach him, within five days shall have him flogged. But if he (the lord) will not flog him, then the king's bailiff shall take him and within five days have him flogged and make use of him for himself. But the husbandman has the choice of releasing the slave's hide with six counted aurar and have his slave himself. But if he (the slave) be of foreign birth, and suit is brought because of him, then his lord shall sell that slave to the one who has suit and *he* shall torture

have been connected with a decrease in the demand for unfree laborers and an increase in the number of needy free, so that the master was not so dependent upon his stock of slaves. But, although some outside cause must have helped to free the master from the economic necessity of buying back the slave just because he was a laborer born to the toil, I am at a loss to point out the exact evidence of this change. The fact of the slave's being given up to corporal and capital punishment made crime more difficult for him and developed the sense of moral responsibility which made it more natural to him to answer for his own deeds.

Hitherto the slave had never come to court except on extraordinary occasions to be punished, or appeared as defendant except for the benefit of the lord.¹ But henceforth the lord might send his slave to court if he chose, although he had to appear with him as the guarantor that the demands of the law were fulfilled. The slave was even admitted to ordeal as any free man.² But the punishments he underwent were very much the same; at least the laws suggest no difference: 1) whipping (3 sol), 2) castration (6 sol), 3) capital punishment. In other words the property relation which had been predominant before underwent a distinct change: it was not so much the ownership, the economic relation, as the social which came to the fore. As Jastrow has expressed it: the slave was henceforth rather in his lord's protection, in his *mund*.³ The slave was still an unfree, but he was not a

him till he tells the truth in such a way that he is worse neither in work nor in worth; and later the husbandman shall take that slave, if he is innocent, and use him. But if the strange slave runs away from his lord and he is afterwards taken, within five days he shall be castrated or the husbandman shall have his slave." See also *GPL*, c. 262.

¹ *Lex Sal.* tit. 39. Add. 1 and 2, where the slave testifies at the malloberg (with witnesses) in favor of the lord against the freeman who had abducted him. Cp. *Digest* xxii. 5; 7, where testimony of slaves was admitted when all other proofs were lacking. Also in case of rape and lese-majesty, *Ed. Theod.*, cc. 19, 49. King's slaves and slaves of the Abbey of St. Germain could swear in court as well as free, but more trust was put in the confession pressed from them by torture. GUÉRARD i. p. 311.

² First instance of ordeal as open to slave *Lex Sal.* Capit. iv. 5 and 6; v. 12. *Lex Rib.* 30; 1 and 2. An innovation of the church? The first time the church expresses the responsibility of the slave is during the early part of the sixth century, soon after the conquest of Gaul by the Franks. vide the famous *Concil Agathen.* (a. 506), c. 62, (on Visigothic territory), confirmed by *Con. Epaon.* (a. 517), c. 34. Slaves admitted to trial by combat as champions for others, slave against slave. Vide *Lex Bajuuv.* 17; 1 and 2.

³ I cannot guarantee the exact wording.

thing nor an animal, he was a person, although an extremely reduced one. This change very likely hangs together with the general amelioration of family relations which can be observed in the gradual reduction of the *mund* from a relation of absolute power to one of conditional guardianship under the supervision of the kin,¹ the slave moving along as it were in the wake of the free. The lord held court where the slave appeared as defendant,² different from the summary justice of before and the greatest change of all is that the slave paid for the stolen object³ and for the release of his hide⁴ either to the law which would be to the injured party or to the lord who was supposed to have paid the price beforehand. Thus was established a responsible relation to society on the part of the slave. Of course, what the slave had to pay with was in the first place accorded him by the lord⁵ but it must have been something which the slave had an opportunity to make something more out of by his own industry; and here we come back to the question of the slave's property in the shape of his *peculium* or *orka*.

That slaves should have been settled on land of which they paid a certain amount of the produce as due⁶ and kept the remainder for themselves, seems to be the most natural solution of their maintenance and the alimentation of their children. The laws and historical records make little mention of this. To have the slave do work for himself and keep the income from it, seems an equally simple solution of how

¹ HEUSLER, *Institutionen*, i. p. 21.

² In England where the relation of the hlâford to free and unfree alike (the word is first mentioned in the laws of *Ine.* a. 688-690. ed. Liebermann) evidently had existed for a long while (*Aethelberht*, c. 90, betw. a. 601-604), the slave must at an early date have had the privilege of answering for himself. As Guérard remarks (i. p. 278): "Les trois conditions serviles — l'esclavage, la servitude, et le servage, existent simultanément." There are other traits (or rather absence of such, for example castration) which indicate that the English laws were either conspicuously silent in regard to the slave or far less severe in their treatment of him.

³ *Aethelberht*, c. 90.

⁴ *Wihtræd*, c. 10, 15. *Ine.* c. 3; 1. See the apocryphal: "aut tres (sex) solidos reddat — pro dorso suo" (*Lex Sal.* 12; 1 and 2), which after all may express the change that really took place.

⁵ GUÉRARD i. p. 294: "Dans la règle le maître retenait le pécule du serf qu'il vendait. (*Leg. Visig.*, v. 4; 15. *Leg. Bajuv.*, xv. 6) et cette coutume était conforme au droit Romain." *Digest xviii.* 1; 29. xxi. 2; 3.

⁶ *Leg. Bajuv.* (ed. Walt.), i. 14, *Lex Alam.*, 21 (A) may serve as instances, although hardly typical of anything but the customs of the church.

to provide for everybody within the estate. If the law formerly indulged in the fiction that the slave had no identity, the law now indulged in the diametrically opposite one that the slave was less of a burden, if he were allowed to look after something which gave him the shadow of self possession. Originally and legally the slave could call nothing his own; having no legal personality, he could hold no property; everything, as it was given to him, could also be taken away from him; but practically it became the custom (very early as it seems¹) to recognize a certain amount of property as his own. This would spur him to industry and make him more content with his lot. Of course what he earned was ultimately the lord's, as he himself was the lord's, and at his death it all came back to the lord who bestowed it anew on the slave's children or on some other slave; but in the meantime it helped the slave within certain limits to manage for himself. That with the consent of the lord he could buy and sell, receive gifts and make payments seemed only the result of his having a little property. The question is, of course, how much of what he earned was his own — a question which I must put off to a more convenient time. The laws occasionally speak of "peculium," though meaning not land but inventory,² which exceedingly complicates the question. There is a possibility, which amount almost to a probability, that the *peculiare* sometimes spoken of³ (but always in the same set terms)⁴ in the Formulae for the liberation of the slave may have reference to something different from cattle or property in general. The expression *laborare, conlaborare, collaboratum*, suggests far more the work on the soil, the cultivation of land. Thus the phrase: "Peculiare quidem suum sive collaboratum cum omnibus facultatibus suis" (*Form. Cod. Laudum.*, 14) points to land (perhaps a clearing) which is to be given the liberated for his maintenance. The fixedness of terms, however,

¹ But at widely different times within each nation; cp. *Lex Sal.*, titles 12, 26; 2. *Var.* (a. 490-510). *Lex Rib.* 17, 18, 19 (a. 560?), where the slaves having possessions appears as a possibility, and Anglo-Saxon laws, *Aethelberht*, c. 90 (601-604), where this seems already a matter of long standing. Further, the somewhat ambiguous *Leg. Lang.*, *Roth.* 234 (a. 643), and last but not least the Scandinavian laws, which if late in date are old in content.

² *Roth.*, c. 234. Doubtful *Lex. Cham.*, 14.

³ *Form. Andec.*, 45, 59, *Marc.*, ii. 29, 33, etc.

⁴ ". . . peculiare quod . . . laborare potuerit." *Form. Andec.*, 59. ". . . peculiare concessio quodcunque laborare potuerint." *Marc.*, ii. 29. "peculiare quod habet." *Bitur.*, 8, etc.

is very remarkable¹ and the words may mean something or nothing, according to whether it is possible to prove that *laborare*, *conlaborare* are used only for labor in connection with land. This it is possible to do at least in regard to *conlaborare*.² *Laborare* signifies work in general³ often connected with the possession of and care for property, in this case most likely land; *conlaborare*, however, emphasizes the meaning of work, hard work, as suggested by the prefix, much as in the German *be-arbeiten*. In case *peculiare* should have followed the common meaning given *peculium*, and indicate cattle,⁴ the heads or herd allowed the slave would have given him little help in maintaining his freedom, even if the latter were given him in perpetuity, unless the bit of land on which to graze were secured. In a number of cases the liberated slave, as already indicated (note 1), was freed from the obsequium,⁵ *i. e.*, the further dependence upon the liberator; and although this privilege may not have counted for a great deal, since the liberated sooner or later was obliged to ask for someone's protection, yet the ownership of land on which social and political rights rested must have been accorded him, before the chart could even suggest possibilities of that kind. For establishing beyond doubt the existence of a true slave's *peculium* the Norse Royal Sagas may perhaps help us. The Saga (Olafs hins Helga, *Heimskringla*, ch. 22) speaks of a rich and powerful lord and says:

Erling had over thirty thralls at home, besides other servingfolk; to his thralls he allotted each day's work, which being done he gave them leave and

¹ *Form. Sal. Lindenbr.*, 9. ". . . *peculiare vero suo seu conlaborato quod habet vel deinceps elaborato potuerit, sibi habeat, concessum adque indultum,*" etc. In this case it is a slave who liberates his slave. But, notwithstanding, the same terms occur, ex. g. "*mundeburdium*," "*defensio*," "*obsequium*," which figure in the chart given by a free man, although it is more than suspicious that the liberated should owe "*obsequium*" to his inferior.

² *Form. Sal. Bign.*, 22. ". . . *decima de omnia fructa quicquid super ipsam terram conlaborare potueris.*" In connection with *peculiare*, *Form. Sal. Merk.*, 14; *Sal. Lindenbr.*, 20.

³ *Form. Marc.*, i. 35. ". . . *antecessores abbatis ibidem laboraverunt.*" *Marc.*, ii. 7. ". . . *et quod pariter in conjugium positi laboravimus.*" *Ibid.*, 17, ". . . *vel in tuo servitio pariter laboravimus.*"

⁴ As in *Form. Bitur.*, 15, where a free man transfers ownership in all his property to his wife. The real difficulty in the explanation of *peculiare*, exactly as in the case of *peculium*, lies in its frequent use for free and unfree property alike. Cf. *F. Sal. Merk.*, 33.

⁵ *Form. Marc.*, ii. 32. *Cart. Senon.*, 6, 43, etc.

leisure, each one who wished, to work for himself in the dusk or at night; he gave them acre-land wherein to sow corn for themselves, and to get them money by the increase thereof; he set a price and ransom on each of them, and many redeemed themselves the first or second year, but all in whom was any thrift redeemed themselves in three years. With that money Erling bought himself other thralls!

And the same Saga tells later about the same lord and his slaves (in regard to the incident with Asbjörn Selsbani, ch. 123): "Said Erling: 'It seemeth to me most like that my thralls own so much corn as that thou wilt have a full cheaping; and they be not within laws or lands-right with other men.' Then the thralls were told about the bargain, and they gave forth corn and malt and sold it to Asbjörn, who loaded his ship even as he would." (Morris's Translat.) That the land was given to thralls not merely as their peculium but as their property equivalent to their freedom, *Laxdæla Saga* (ch. 6) gives an instance of where it is told how Unnr settling a portion of Iceland with her retainers gave to her freedman one valley, to her slave another.¹

In the possession of such peculium or income from his work lies, in my opinion, the secret of the ultimate ameliorization of the state of the slave. It was the fundamental principle of his gradually improving condition. As it was economic causes which chiefly led to the establishment of slavery, so it must have been economic causes which helped to bring about the abolition.² The possession of property made the slave, under circumstances, able to pay fines, and the lord, although the source of the peculium, was not so much engaged in a pecuniary way, needing to come to the rescue only in extraordinary cases. The slave accordingly was less despised because he was less needy of constant support. It must be supposed, too, that the slave, on his side, since he had to pay himself, and was less driven by desperation, tried to commit fewer crimes so as not to have his little reduced to even less. His little having made him—only conditionally, of

¹ "Hundi het lausingr hennar; . . . honum gaf hon Hundadal. Vifill het þræll . . . , hon gaf honum Vifilsdal."

² The possession of a peculium had much the same significance then as military service with the accompanying benefice in the lord's or senior's retinue had at a later period. Service and benefice became the lever which, unsuspected by the ruling class, raised the ministerialis, or miles, from the position of mere "knecht" to that of vassal and privileged follower who ended, perhaps, as bailiff or lieutenant to the king. The benefit of the peculium was, of course, far more humble in nature, as were agricultural pursuits, compared with the danger and bravado of a warlike profession.

course—morally less dependent upon the lord, he separated himself from the lord, as it were, existed no more solely for his benefit, was far more one of his tenants, retainers; represented, indeed, by the lord, subject to his judgment, but not arbitrarily treated as an article of absolute property. It is the milder, less exposed form of slavery, that which is hardly to be distinguished from serfdom.

There is another species of slave to which reference has once been made (note 1, p. 418) and which it is only proper should be spoken of in connection with the slave's peculium. This is what Guérard I, § 153, calls the slave of the slave, the *servus vicarius*, the helping, the "hired" slave, as distinguished from the *servus ordinarius*, the slave in charge, as it were. There is, of course, nothing very astounding in the slave as husbandman, under circumstances, being in need of some one to help and that the help was accorded him from among the surplus slaves of the manor for which he paid, perhaps, an additional gratification. The position of the *vicarius* was evidently a shade less favorable than his temporary employer or, on certain conditions, even master,¹ as it was natural that when slavery dissolved itself into layers, an upper and a lower, the lowest should retain the traits of severer bondage which as yet could not be done away with. The whole matter, however, is so evidently a continuation of Roman customs, rather than a Germanic institution, that, in spite of its great interest and its peculiar parallel in the "freedman's freedman" of the Icelandic law (*Grágás* 96), I must refrain from further discussion of it here.

The improvement of condition must also have brought additional suffering to the upper layer of slaves, particularly through the publicity of punishment and the competition and jealousy of the needy free. The demand upon the slave's power of resistance grows fiercer and accordingly many must have perished in the struggle.

It is very likely that under the influence of this changed relation, as well as through the efforts of the church, the marriage of the slave comes to be recognized and respected. Originally the slave could not be married, the master could separate husband and wife at any time and dispose of either as he pleased. With the idea of the slave possessing property, however, the thought must have come forward that he could possess a wife as well, and that not even the master could unpunished violate the matrimonial rights of his slave.²

¹ *Marc.* ii. 36.

² *Decretum Vermerense* (a. 758) Leg. sect. ii. 1. p. 40. Cf. with *Cod. Theod.* ii. 25; 1. *Grágás* c. 111.

Thus not only the state, as represented by the king, or the church, as the advocate of brotherly love, helped the slave forward to a better existence; but also the very incongruity of slavery itself in connection with economic and political changes which no one could quite foresee. There are other more extraordinary and particularly humane signs of betterment for the slave which had nothing to do with either Roman or Christian influences, but sprang purely from Germanic life, and which give us a gentler picture of this than we have hitherto been able to have. I refer to cases where the kindness of possible relationship broke the awful rigor of authority and took the place of superiority. Such cases are found in Norse and Swedish law where the slave who had grown up in a man's household became almost his foster-child and was called with a common name, "fostri."¹ To him a higher value was ascribed, he came nearer the condition of a "freeman."² In the case of the fostri the master seems to have been obliged to redeem him even where he would have left the ordinary slave to his fate.³ Of all slaves the fostri alone could legally receive considerable gifts from his master. The master could make him presents up to a certain value without the knowledge of his right heir. This is probably because the fostri was most likely the master's own child although of slave birth, brought up by him and entitled to some favor, but with no formal rights whatever.⁴

Last but not least we may ask what, outside rebellion, the slave did for himself by way of peaceful combination of effort. In the North nothing is heard of. Here no commerce, no industry, no opportunity except the ordinary small trade and hard labor opened a way to freedom, and even then only for the individual, not for the class. On the continent, however, where the population was larger, communication easier, traditions riper, and habits of peaceful occupation more enduring, the formation of "guilds," of which we have some slight evidence, seems to have been directed towards regulation of work and services.⁵ Here certain arts and crafts were appreciated or highly in demand;

¹ AMIRA i. p. 394, 712, 464.

² *Saga Olafs Trygvass.* c. 55. Cf. GREGORY OF TOURS, v. 18—Was Galen a slave?

³ AMIRA i. 712. The wounding of a freeman by a slave is to be paid by fine if slave be a fostri, otherwise by body and life, p. 464. The price of an ordinary slave is 3 marks, sometimes 4, of an ox 4 marks, and stallion 6, fostri 8.

⁴ Gpl., 129; Fpl., ix. 17.

⁵ THIERRY, *Récits*, vol. i. p. 260.

the freeman had no time nor desire to learn them, the slave seemed to be the one from whom such patience and such attention should be expected. The tradition of professional "guilds" was still alive among the remnants of Roman population; moreover, the church, especially the monasteries, and the other great lords—whose estates were small principalities in themselves which supplied within their limits all needed for numerous dependents—these could not but want their slaves to combine for the perfection of their training and rapidity of their work. In more favorable instances the desire for higher wages and better sales would compel closer association, although this rough concern of dependent workers could hardly be given the name guild. The conscious existence of the guild began only when serfdom too had run the greater part of its course, and free labor combined with half free to the establishment of an industrial class. Such, as they were, the combines of slaves, met with favor as long as no danger from them appeared to threaten state or society. It is this sense of danger which seemed revealed in the capitulary of Charles the Great (44. Bor. c. 10), where it is ordained that slaves, as members of conspiracies, should be flogged, although nothing is said about the nature of the conspiracy. What reasons slaves should have had for conspiring, except the hope of bettering their condition, it is difficult to see. It is not unreasonable to suppose, however, that the conspiracy might have had some reference to the "guilds" which the Frankish government watched with as jealous an eye as in the past the Roman. As for what the guilds did for the slave besides rousing suspicion, we can only surmise that through them those who had no land earned in another way more rapidly and securely what helped in the end to buy freedom.

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